

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

BRANDY K GOFORTH
Claimant

APPEAL NO: 09A-UI-05547-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALEGENT HEALTH
Employer

OC: 02/15 /09
Claimant: Appellant (1)

Section 96.4-3 – Ability to and Availability for Work
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Brandy K. Goforth (claimant) appealed a representative's March 26, 2009 decision (reference 01) that concluded she was not eligible to receive benefits as of February 15, 2009, because she was still working the same manner as Alegent Health (employer) had hired her. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 4, 2009. The claimant did not respond to the hearing notice or participate in the hearing. Josh Burrows, a TALX representative, appeared on the employer's behalf. Jennifer Smith was available to testify. Based on the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of February 15, 2009. On March 26, 2009, a representative's decision was mailed to the claimant and employer. The decision held the claimant was not eligible to receive benefits as of February 15, 2009, because she still worked the same hours as the employer had hired her to work. The decision informed the parties an appeal had to be filed on or before April 5, 2009.

The claimant appealed the decision by faxing her appeal letter on April 7, 2009.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code § 96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and

871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed one day after the deadline for appealing expired. The claimant had until April 6 to file a timely appeal because the tenth day for filing an appeal was Sunday, April 5.

It is not known when the claimant received the decision because the claimant did not participate in the hearing. The claimant, however, failed to establish that she filed a timely appeal or had a legal excuse for filing a late appeal. Since the claimant did not file a timely appeal or establish a legal excuse for filing a late appeal, the Appeals Section has no jurisdiction to make a decision on the merits of the claimant's appeal.

DECISION:

The representative's March 26, 2009 decision (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section has no jurisdiction to address the merits of her appeal. This means the claimant remains ineligible to receive benefits as of February 15, 2009.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css